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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/080,996	02/20/2002	Thomas Huber	2050.120US1	9681
44367	7590	07/24/2008	EXAMINER	
SCHWEGMAN, LUNDBERG & WOESSNER/OPEN TV P.O. BOX 2938 MINNEAPOLIS, MN 55402-0938				SAIN CYR, JEAN D
ART UNIT		PAPER NUMBER		
		2623		
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/080,996	HUBER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	JEAN D. SAINT CYR	2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE Three MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on \_\_\_\_\_.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1,3-7,23,24 and 26-30 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_ is/are allowed.  
 6) Claim(s) 1,3-7,23,24 and 26-30 is/are rejected.  
 7) Claim(s) \_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 20 February 2002 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____.	6) <input type="checkbox"/> Other: _____ .

**DETAILED ACTION**

**Continued Examination Under 37 CFR 1.114.**

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 02/28/2008 has been entered.

Claims 1, 3-7, 23-24, 26-30 are presented for examination.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-7, 23-24, 26, 29-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rodriguez et al in view of Ellis et al, US No. 20030149988.

Re claim 1, Rodriguez et al disclose a method of broadcasting of a program containing a plurality of versions(a plurality of broadcast versions of the movie, col.22, line 35) said method comprising: broadcasting program information indicating that said plurality of versions of said program are available(the VOD application server 115

manages the loading of video content such as movies or other programs into the video server 113 from content providers and creates a list of available video titles and associated VOD data, col.12, lines 61-64);

receiving one or more requests for at least one version of said plurality of versions of said program(a subscriber can interact with the DBDS to request services, such as Pay-Per-View programming, View-On-Demand programs, more comprehensive EPG data for desired programs, col.8, lines 55-57).

But Rodriguez et al did not explicitly disclose making a decision to broadcast said at least one version of said plurality of versions of said program based upon a frequency of said one or more requests received; and broadcasting said at least one version of said plurality of versions of said program.

However, Ellis et al disclose it may not be desirable to record a program unless a certain number of users have requested it. At a predefined period of time before the requested program airs, consolidator 115 may check job queue 120 to see if enough users have requested the program. If there are not enough users, consolidator 115 may generate a message that is distributed back to the requesting user or users by distribution equipment 21. When the program guide receives such a message, the program guide may notify the user that the program is not being recorded in paragraph 0086.

It would have been obvious for any person of ordinary skill in the art at that time the invention was made to combine the invention of Rodriguez with the invention of Ellis for the benefit of having a system that can make decision more accurately.

Re claim 3, Rodriguez et al disclose a method of broadcasting a program containing a plurality of versions to a receiving unit(a plurality of broadcast versions of the movie, col.22, line 35), said method comprising:

broadcasting program information to said receiving unit indicating that said plurality of versions of said program are available(the VOD application server 115 manages the loading of video content such as movies or other programs into the video server 113 from content providers and creates a list of available video titles and associated VOD data, col.12, lines 61-64);

receiving requests from said receiving unit(a subscriber can interact with the DBDS to request services, such as Pay-Per-View programming, View-On-Demand programs, more comprehensive EPG data for desired programs, col.8, lines 55-57) for at least two versions or said plurality of versions of said program;

But Rodriguez et al did not explicitly disclose making a decision to broadcast said at least one version of said plurality of versions of said program based upon a frequency of said one or more requests received; and broadcasting said at least one version of said plurality of versions of said program.

However, Ellis et al disclose it may not be desirable to record a program unless a certain number of users have requested it. At a predefined period of time before the requested program airs, consolidator 115 may check job queue 120 to see if enough users have requested the program. If there are not enough users, consolidator 115 may generate a message that is distributed back to the requesting user or users by distribution equipment 21. When the program guide receives such a message, the program guide may notify the user that the program is not being recorded in paragraph 0086.

It would have been obvious for any person of ordinary skill in the art at that time the invention was made to combine the invention of Rodriguez with the invention of Ellis for the benefit of having a system that can make decision more accurately.

Re claim 4, Rodriguez et al disclose wherein said receiving unit(see fig.1, element

14, DHCT) is configured to receive a broadcast comprising said at least two versions of said program(a plurality of broadcast versions of the movie, col.22, line 35);

select one version from said at least two versions of said plurality of versions (a subscriber may select one a multiplicity of choices, col.14, lines 34-35; a plurality of broadcast versions of the movie, col.22, line 35) of said program using viewer preference information (efficiently allocated in a digital broadband delivery system based at least in part on subscriber preferences, col.4, lines 2-3); and display said one version (see fig.4, television).

Re claim 5, Rodriguez et al disclose wherein said viewer preference information is stored in said receiving unit(the DHCT 14 may include logic means to store subscriber profile data that includes information about the subscribers past viewing patterns, col.18, lines 26-28).

Re claim 6, Rodriguez et al disclose wherein said one version is selected by obtaining content information contained in a blanking interval of said program(such as EPG and VOD Catalog information, can be sent with the analog video image in the Vertical Blanking Interval of the video signal, Col.6, lines 55-58).

Re claim 7, Rodriguez et al disclose wherein said one version is selected by obtaining content information contained in n packet of digital information comprising said program(Data is formatted, such as in Internet Protocol , mapped into MPEG-2 packets, and inserted into the multiplexed MPEG-2 transport streams, col.7, lines 12-14).

Re claim 23, Rodriguez et al disclose a broadcast system configured to: broadcast information indicating that said plurality of versions of said program are available (the VOD application server 115 manages the loading of video content such

as movies or other programs into the video server 113 from content providers and creates a list of available video titles and associated VOD data, col.12, lines 61-64);

receive one or more requests for at least one available version of said plurality of available versions of said program(a subscriber can interact with the DBDS to request services, such as Pay-Per-View programming, View-On-Demand programs, more comprehensive EPG data for desired programs, col.8, lines 55-57);

broadcast said at least one available version of said plurality of available versions of said program if said one or more requests meets said predetermined criteria (The statistical model can be predetermined to produce a particular result such as maximizing the total number of subscriber requests fulfilled, such as requests for VOD access and pay-per-view access, or maximizing the revenue generated from the available bandwidth. For example, if the bandwidth allocation manager 125 receives a large number of requests for particular video content such as a popular movie to be transmitted at approximately the same time, the bandwidth allocation manager 125 may allocate several channels to broadcast that content according to an NVOD delivery model so that the most highly requested video content is available without necessitating initiation of a VOD session; col.18, lines 35-47; that means broadcasting any version of the content is based on revenue that depends in the number of requests from the subscribers).

wherein said predetermined criteria includes a number of the one or more requests for each of said plurality of versions (a subscriber selects and purchases movies, retrieves program information for the respective VOD movie titles, and from which the subscriber enters subscriber selection criteria and/or preferences, Col.3, lines 63-66; that means users can select one of the plurality of versions).

But Rodriguez et al did not explicitly disclose make a decision whether to broadcast said requested at least one available version of said plurality of available

versions of said program based upon said one or more requests

However, Ellis et al disclose it may not be desirable to record a program unless a certain number of users have requested it. At a predefined period of time before the requested program airs, consolidator 115 may check job queue 120 to see if enough users have requested the program. If there are not enough users, consolidator 115 may generate a message that is distributed back to the requesting user or users by distribution equipment 21. When the program guide receives such a message, the program guide may notify the user that the program is not being recorded in paragraph 0086.

It would have been obvious for any person of ordinary skill in the art at that time the invention was made to combine the invention of Rodriguez with the invention of Ellis for the benefit of having a system that can make decision more accurately.

Re claim 24, Rodriguez et al disclose wherein said predefined criteria includes bandwidth availability(Because a limited amount of bandwidth is available for transmitting services between the DBDS 10 and the DHCT 14, decisions must be made as to how to allocate the bandwidth available for such transmission, col.10, lines 22-27).

Re claim 26, Rodriguez et al disclose wherein a plurality of requests is received from a plurality of said viewers for at least two available versions of said plurality of available versions of said program(receives a large number of requests for particular video content, col.18, lines 41-42).

Re claim 29, Rodriguez et al disclose wherein said predetermined criteria further includes a charge for said at least one available version(The VOD Catalogue data set may also comprise database records containing program information such as program showing times, program titles, program descriptions,

program genres, program release years, casts lists, ratings information, cost and pricing information, col.8, lines 66-67; col.9, lines 1-3).

Re claim 30, Rodriguez et al disclose wherein said predetermined criteria further includes a coincidence of said at least one available version included in another broadcast(if a subscriber order a program with Pause functionality and pauses the program, the bandwidth allocation manager may elect to recapture the unused bandwidth. When the user restarts the program, pausing functionality may be simulated by locating another broadcast or Nvod version of the program with a later start time that has reached a point in the program approximately equal to the point where the subscriber paused the program, col.21, lines 66-67; col.22, lines 1-7).

Claims 27-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rodriguez in view of Ellis further in view of Tsukidate et al, US No. 6262721.

Re claim 27, Rodriguez et al disclose all limitations of claim 27, but did not explicitly disclose associate an advertisement with said characteristic; and broadcast said advertisement with said content information.

In an analogous art, Tsukidate et al disclose associate an advertisement with said characteristic; and broadcast said advertisement with said content information(program relating to the particular broadcasting program are written in the service addition information Isa as attribute information of the particular broadcasting program. As an example, in an operation of the broadcast system according to the present invention, the service addition information Isa of a broadcasting program is broadcasted from the center station before service content information ISc, for example, including contents of the broadcasting program, contents of a commercial message attached to the broadcasting program and contents of other information, is broadcasted, col.12, lines 40-50).

It would have been obvious for any person of ordinary skill in the art at that time the invention was made to introduce broadcast advertisement with the content information into the system of Rodriguez in view of Ellis, as taught by Tsukidate, for the benefit of giving more opportunities to users.

Re claim 28, Rodriguez et al disclose wherein said content information comprises a rating of said at least one available version(The VOD Catalogue data set may also comprise database records containing program information such as program showing times, program titles, program descriptions, program genres, program release years, casts lists, ratings information, cost and pricing information, col.8, lines 66-67; col.9, lines 1-3).

### **Response to Arguments**

Applicant's arguments with respect to claims 1-7 have been considered but are moot in of the new ground(s) of rejection. The amendment to the claims necessitated the new ground(s) of rejection discussed above. This office action is non-final.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jean Duclos Saintcyr whose phone number is 571-270-3224. The examiner can normally reach on M-F 7:30-5:00 PM EST.If attempts to reach the examiner by telephone are not successful, his supervisor, Brian Pendleton, can be reach on 571-272-7527. The fax number for the organization where the application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Retrieval (PAIR) system. Status information for published applications may be obtained from either private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197(toll free). If you would like assistance from a USPTO Customer Service Representative or access to the

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automated information system, dial 800-786-9199(IN USA OR CANADA) or 571-272-1000.

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/Brian T. Pendleton/

Supervisory Patent Examiner, Art Unit 2623